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Afsah, Ebrahim

Published in:
Kennedy School Review

Publication date:
2000

Document version
Publisher's PDF, also known as Version of record

Citation for published version (APA):
Afsah, E. (2000). Islamic Exceptionalism: How valid is the Concept of 'Islamic Human Rights'? *Kennedy School Review*, 1(1), 5-15. <http://www.hks.harvard.edu/ksr/volumes/2000/islamic.htm>



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KENNEDY SCHOOL REVIEW 2000

Islamic Exceptionalism -- How Valid is the Concept of Islamic Human Rights
Ebrahim Afsah

Introduction

◆ Nations are associates, not rivals in the grand social enterprise. ◆
(Jermemy Bentham, cited in Oakeshott, 1993:101)

The debate over human rights is not confined to the protection of the individual from abuse, but has wider and more consequential implications for the community of states. Nowhere has this debate been more pronounced than between the Muslim world and the Christian West. Both sides have grown accustomed to viewing each other as intrinsically different, the very embodiment of ◆ otherness ◆. This debate has often focused on the incompatibility of cultures, as expressed for instance in presumably mutually exclusive conceptions of human rights.

Based on the belief that there are no essential differences between people, including the Christian West and the Islamic East, this paper argues that notions of human rights are not the prerogative of any one cultural tradition but arose in response to the changing needs of society. Such an analysis rejects the ahistorical view that sees the emergence of human rights as the triumph of a particular cultural or religious tradition. Rather it regards the emergence of individual rights as the ◆ rules of the game ◆ necessary to moderate the dialectical struggle between different sections of society, and between state and society.

This view takes due notice of the impact of historical development and the socio-economic level of societies, and permits a fuller understanding of international human rights. Seen from this perspective the claims of cultural relativism, both Western and Islamic are examined, arguing that human rights are best understood without reference to any particular religious or cultural tradition.

This paper thus commences with a brief description of the claims to particularity often made by adherents of political Islam. It is pointed out that the historical diversity and the various reactions to modernity throughout the Muslim world make it very difficult, if not impossible to identify any one authoritative version of Islam.

Part three discusses in some detail the claims of both Western and Islamic proponents of cultural relativism, concluding that relativist notions are not particularly helpful for our understanding of international law, and particularly human rights norms. This is followed by a discussion of the manipulation of relativist arguments for essentially political reasons, which take remarkably similar forms across the Third World, raising certain doubts as to legitimacy of the Islamist line of argument.

Part four examines the claim, often made by both Western and Islamic writers, about the sui generis character of Islamic societies. By pointing out sociological, i.e. on-religious causes for the rejection of Western models throughout the Muslim world, the section attempt to refute claims to Islamic exceptionalism.

Part five addresses the perceived genesis of international human rights norms from the Western Judeo-Christian tradition. It maintains that religion-based explanations of human rights are inferior to one that examines the secular sociological background behind the emergence of such norms.

The conclusion restates the overall claim that the rejection of Western modernity expressed in Islamist rhetoric must be understood in the context of popular exclusion and alienation brought about by the advent of an overpowering modernity.

The Islamist Position

Many governments and some scholars have argued that international human rights standards are to a large extent incompatible with the tenets of Islam. The argument is based on two interrelated claims: that international human rights are a product of Western, i.e. Judeo-Christian culture, and that these are in toto not compatible with the prescriptions of a precisely identifiable, distinctly Islamic position on human rights. Provisions regarding religious freedom (especially the freedom to change one's religion), gender equality, torture (i.e. sharia sanctions that amount to cruel and unusual punishment), freedom of expression, privacy (sanctity of home; dress code), the freedom of dissent and scientific freedom, etc. have been found to be at variance with the Divine law.

Said and Nasser express the fundamental point of contention succinctly: (Islamic) jurists see human freedom in terms of personal surrender to the Divine Will. Freedom is not an inherent right (1980: 76-77). The US-Iranian philosopher Nasr argues similarly that the human condition is geared towards servitude of God, freedom is therefore limited to the freedom to do what is right. Absolute freedom remains a prerogative of the Divine: Personal freedom lies, in fact, in surrendering to the Divine Will. (1980: 96-97).

While secular notions of human rights are based on the nature of man as a rational and sentient being, Islamic notions of human rights are seen as emanating from a Divine covenant: When we speak of human rights in Islam we mean those rights granted by God. (Mawdudi, 1980: 15). Whatever the theological merits of such an approach, its application to international human rights norms is questionable. It disregards the impact of modernity and the historical struggles that brought forth the modern notion of human rights. This flaw is elegantly summarised by Zakaria, who criticises the theocentric conception of man behind this position and challenges it on two grounds:

It is non-historical, or rather it freezes a certain moment of history and holds fast to it till the very end, thus doing away with dynamism, mobility and historical development. Finally, it is non-empirical; it seeks to imitate a theoretical and spiritual ideal, while completely disregarding the effect of practice on this theoretical ideal. (1986: 237).

The failure of the Islamist position to take into account the impact of historical forces is discussed below in the context of the advent of modernity into traditional societies. But there is a second, more serious, flaw in the argumentation of apologetics of Islamic human rights schemes, which are based on the implicit or explicit assumption that there is such a thing as the Islam. The traditional schism into distinct theological and judicial schools, together with the fragmented response toward modernity render any attempt to construct a homogenous concept of Islam a vacuous exercise. In the course of the century-old encounter between the West and the Islamic Middle East, the retreating Islamic world has developed four response patterns to meet the challenge (Farhang, 1988: 65):

Secularists have argued that Islamic societies are backward and must undergo fundamental

economic, socio-cultural, and legal reform to meet the technological and military challenge posed by the West. A prime example would be Kemalist Turkey.

Traditionalists reject modern cultural and political ideas, and wish to retain traditional socio-cultural values and authority structures. They do not reject the technological and bureaucratic innovations of the West, but believe that these can be detached from the corrupting aspects of Western life. The oil-rich Gulf monarchies are the most obvious examples of this view. They believe that their wealth allows them to import only select features of a generally alien and hostile West.

Religious modernists, in contrast, do accept the need for radical reform but maintain that it must be grounded in a liberal and scientific interpretation of Islam. They thus reject the wholesale adoption of Western mores and claim that the progressive aspects of Western thought have already existed in early Islam. This approach was followed e.g. in the Tunisian reform of personal status law in 1958.

Fundamentalists, reacting to the failure of both secularists and religious modernists to reach a functioning synthesis between Islam and modernisation, portray the cultural encounter in terms of a diametrical confrontation. Islam is seen as inherently superior to the Western tradition, including both Capitalism and Marxism. The existential confrontation does not allow for accommodation or pluralism, but posits Islam as the only moral order with themselves as exclusive representatives of the Divine will. Khomeini is probably the best known representative of this school of thought.

Apart from these largely political reactions in the modern age, it is important to bear in mind the extraordinary variety that has characterised Islamic theology and jurisprudence from its very inception, that led to the development of at least six equally authoritative traditions which resulted in great variations in the interpretation of Islamic doctrine (Schacht, 1962).

Whatever the respective merits of the various schools, and the degree of cross-fertilisation between them, there simply never existed a single authoritative interpretation of what constitutes the proper canon *islamicus*. Farhang thus contrasts the broad scope of Islamic law with its heterogeneous character, despite the sharia's grasp of nearly all aspects of individual and social life, there is no unified Islamic legal system, enshrined in integrated codes and accepted by all Muslims (1988: 65).

This crucial fact is often forgotten, not least with regard to the proper position of human rights within Islam. The traditional fragmentation into co-existing theological schools, together with the four broad patterns of response towards modernity which transgress the classical division of the Divine law, render *ad absurdum* any attempt to speak of Islam as a monolithical entity. Given this diversity, it is thus not surprising that Mayer finds that Muslims have taken many differing positions on human rights, including the unqualified endorsement of international human rights standards as fully compatible with their culture and religion. (Mayer, 1991: 11-12).

Cultural Relativism

The relativist position is founded on the belief in the fundamental otherness of Third World societies, which makes Western concepts inapplicable. This position with regard to human rights has been well expressed by Abul Aziz Said:

While the pursuit of human dignity is universal, its forms are designed by the cultures of people. [the] emphasis on Western common denominators projects a parochial view of human rights that excludes the cultural realities and present existential conditions of Third

World societies. (1979: 86).

This position further argues that condescending neo-colonialist attitudes show a lack of respect for the sovereignty of Muslim countries. The criticism of non-western human rights practices serves as a welcome vehicle to improve the Western image and discredit Islamic culture as backward and primitive. By establishing the West's inherent moral superiority, the ultimate goal is to show that Western political, economic, and cultural hegemony was and is a natural and beneficial phenomenon for human kind. (Mayer, 1991:8).

Cultural relativism is a critique of such traditional Western scholarship about non-European people. Edward Said's Orientalism and his more recent Culture and Imperialism (1978, 1993) argue that such scholarship is not conducted in a spirit of scientific research but is based on the racist assumption of Western superiority and Eastern inferiority. Such scholarship posits an ineradicable barrier between the West and the East, obscuring the common humanity of people, and thus dehumanising the Oriental (or African, etc.). Orientalist scholarship thus serves the dual purpose of legitimising Imperialist ambitions, and persuading the Oriental to accept his subjugation as the natural order by depriving him of the intellectual means for self-realisation.

Inapplicability of Cultural Relativism

A mutilation that these societies are inflicting on themselves on the pretext of preserving their being. (Arkoun, 1984:218)

Cultural relativists condemn the notion that there are universal standards by which all cultures can be judged, denying the legitimacy of using values taken from Western culture to judge institutions of non-western cultures. They include international human rights norms among these culture-dependent values, which cannot be applied outside their original context. Apart from the cynical use of human rights for political ends, they maintain that any imposition of international, read Western, human rights norms is tantamount to moral chauvinism and ethnocentric bias (Schwab, 1979: 14). This seems to this author to be an untenable position born out of misguided idealism and political correctness. Proponents of this view decry Western human rights diplomacy, while taking democratic freedoms and human rights at home for granted. Mellerson describes this position aptly as rather arrogant and imperialistic. (1997:14).

Edward Said claims that non-European peoples are entitled to their own history, and he rejects the division of mankind into distinct, immutable categories. What he argues against is the singling out of a particular croup of people as sui generis; but he does not call for new barriers dividing humanity in order to protect indigenous habits from (justified) criticism. To maintain that Western norms cannot be applicable in Islamic milieus, is to subscribe precisely to the Orientalist idea that concepts employed in the West are ipso facto irrelevant and inapplicable in the East. Mayer continues further that

Those who charge that comparisons of international and Islamic law on human rights issues are Orientalist implicitly endorse the same elitist stance ... that international human rights are the sole prerogative of members of Western societies. (1991:9).

Furthermore, whatever the benefits of the relativist position with regard to intact traditional societies and their habits, say the absence of the concept of private property among the San (Bushmen), the application of this position with regard to societies that have experienced decades of interaction with the West and have fundamentally and irrevocably been transformed by this encounter, is open to serious doubt.

The international discourse about human rights is not conducted in an institutional void, but concerns the behaviour of states. The modern nation-state, so enthusiastically endorsed throughout the Muslim world, is part of a cluster of legal and institutional transplants from the West. Notions of constitutionalism and human rights developed as a reaction to the coercive potential of the nation-state and its attendant innovations, such as a modern bureaucracy, army, police, etc. When one is thus comparing the behaviour of Islamic governments or the content of so-called Islamic human rights schemes with international norms:

❖ One is not judging an institution of an intact traditional culture by alien Western standards but examining Muslim❖s reactions to imported legal concepts and to transplants in national legal systems, imports and transplants that they have dealt with for decades.❖ (Mayer, 1991:9).

Cultural relativism, particularly when invoked by a government therefore seems little more than ❖an ideological tool to serve the interest of powerful emergent groups❖ (Howard, 1986:17).

Political Use of Relativist Arguments

❖ In arguments about moral problems, relativism is the first refuge of the scoundrel.❖ (Scruton, 1994: 3 2)

Although Islamic governments and Islamist writers do not tire to stress the exceptional character of their religion which necessitates certain limitations or even outright violations of human rights, their arguments neatly fit into similar pronouncements by other, non-Islamic governments trying to justify repressive rule. The attempts to devise particularly Islamic moral norms inevitably lead not to a distinct ethical system, but merely curtail existing rights. Mayer rightly points out that

❖ The practical results of rights policies associated with governmental Islamisation programs have simply replicated patterns of rights violations common in undemocratic countries outside the Muslim world, violations that gave rise to the current principles of international human rights.❖ (1991:xvi).

Resistance to the changes brought about by modernity is not peculiar to Islamic societies. The resentment of an excessively individualistic culture that places undue emphasis on entitlement, without the attendant sense of obligation, pointing out the dangers of a ❖me-first-society❖, all these are common phenomena in societies which are undergoing rapid socio-political change. Such a resistance to human rights may represent an authentic response when it comes from persons who are immersed in traditional cultures unaffected by the impact of modernisation, or resenting this impact. But this position cannot be regarded as genuine when it is pursued by urbanised elites in societies that have long succumbed to the pressures of modernity. Here ❖communitarian rhetoric too often cloaks the depredations of corrupt and often Westernised or deracinated elites❖ (Donnelly, 1989: 119). M❖ellerson holds likewise

❖ Pressure to limit human rights comes from interested groups, and references to one❖s otherness ❖ serve to conceal power interests❖ (1997:17).

However often the terminology of these elites invokes religious sources and authority, the stakes in the battle over human rights standards are ultimately political. The argumentation employed in Tanzania, China, Indonesia, or in Iran is, not surprisingly, very similar. It has

very little to do with their alleged religious or cultural idiosyncrasies, but very much to do with rationalising the preservation of peculiar, often pre-modern social and political orders that benefit a certain elite disproportionately. ♦ Human rights are intended to protect the weak members of societies, the dissidents, those who want to oppose their governments. There is no logical reason why that idea should be less valid for non-western societies ♦ (Baehr, 1996:19). Mayer stresses the fact that religious criteria serve the sole purpose of diluting or negating the protection afforded by international standards while paying lip service to the ideals of human rights that have gained too much prominence even within their own societies to deny them outright. This is not an Islamic phenomenon but

♦ Part of a broader phenomenon of attempts by beneficiaries of undemocratic and hierarchical systems to legitimize their opposition to human rights by appeals to supposedly distinctive cultural traditions ♦ (1991:215).

The desire to preserve elite power motivates the recourse to a highly idealised mythical past for very pragmatic political gains. It is necessary to look behind the façade of religious rhetoric and examine the historical and societal factors, which lie at the roots of supposedly religious phenomena. Cultural relativism, i.e. the notion that analytical and methodological tools are inapplicable outside their original cultural context, is fundamentally flawed and ripe for political and ideological abuse.

Islamic Exceptionalism

The portrayal of Islam as fundamentally different, indeed the very antithesis of Christianity, whether in its traditional Orientalist version or in its new cultural relativist guise is not based on any inherent characteristic of either Islam per se or the societies that have become Islamic. Having been locked in centuries of warfare and ideological competition, both religions have come ♦ to see in each other the very embodiment of menace and the epitome of the ♦ other ♦ ♦ (al-Alzm, 1993:79).

Muslim societies are unquestionably different from Western societies, but that difference is one of degree not of quality. They do not function markedly different from others, and their behaviour, the forms in which societal tensions manifest themselves can well be explained by reference to socio-economic pressures and universal historical forces without the need to have recourse to the stipulations of an all-pervasive divine order that dominates these societies.

Marriage patterns in Muslim societies, for instance, are often explained through the sunna (model) of the prophet or Qura♦nic provisions. But as Keddie (1988:79) points out eloquently, such patterns of endogamy are by no means particular to Muslim societies but can be found throughout the Mediterranean and are rooted not in religious law but in the requirements of tribal politics and economy, and the perceived need to control women.

Most commentators have concentrated on the phenomenon of Islamic fundamentalism to support their thesis of Islam♦s exceptionalism. The foundations on which fundamentalism is built are socio-economic, not religious. Farhang summarises this process well when he discusses the origin of the Iranian revolution:

♦ The social disruptions caused by the process of modernisation could create anomie in the classical sense, which often results in the growth of anxiety, hostility, and fantasy. ♦ [where] the fundamentalist can easily transform the disorientation of the individual into a collective hatred of the other. ♦ (1988:67).

The failure of both secularist and religious modernist to reach a functioning synthesis

between Islam and modernisation, together with persistent outside influence, has resulted in highly authoritarian and repressive governments. The process of very uneven development and rapid modernisation has led to dual societies throughout the Middle East, where the vast majority is excluded from the benefits of modernisation while becoming deeply uprooted and alienated, not only from their traditional culture but also from their own, modernised compatriots. The resulting disillusionment with Western modernisation that has failed to extend the benefits of development to the poor, has led to considerable disenchantment with the Western model of progress generally, and ... encouraged anti-Western reaction. (Mayer, 1988:99).

Farhang endorses the same position, arguing that we cannot understand the fundamentalist position in politics, particularly with regards to general and civil rights, if we fail to understand the desperate existential conditions of its principal constituency - the urban poor. (1988:66).

Secular foundation of human rights

If one thus accept the notion of the gradual levelling of differences between societies through the working of global historical forces, then notions like democracy and human rights must also be subjected to a critical historical positioning. It is often assumed that the Western Judeo-Christian tradition has been more conducive to the development of human rights, than Eastern religions, notably Islam. Such a proposition is neither logically nor empirically tenable. Halliday is categorical in this respect: no derivation from any religion is ultimately possible (1996:140). Arthur Schlesinger (1989) concurs

As an historian, I confess to a certain amusement when I hear the Judeo-Christian tradition being praised as the source of our concern for human rights. In fact the great religious ages were notable for their indifference to human rights in the contemporary sense.

Bertrand Russel is more candid in his criticism of the revered canon of Western tradition

The Jews first invented the notion that only one religion could be true, but they had no wish to convert all the world to it, and therefore only persecuted other Jews. The Christians, retaining the Judaic belief in a special revelation, added to it the Roman desire for world-wide dominion and the Greek taste for metaphysical subtleties. The combination produced the most fiercely persecuting religion that the world has yet known. (1935: 174).

To be sure, there are traditions, including religious ones, in all nations which can be supportive of the acceptance of human rights ideas. (Mollerson, 1997:77). But the development of human rights in the West was not caused by the existence of any particularly favourable disposition in the prevailing religious climate of Europe. Rights were necessitated by the emergence of new powerful institutions such as the centralised nation-state and its bureaucratic and coercive innovations. By pointing out that the cultural and political traditions of both non-western and pre-modern Western societies did neither include the practice nor the very concept of human rights, Mollerson identifies another causal origin. It is the vastly increased capability for intrusion into the autonomous sphere of the individual that necessitate some kind of protective mechanism. Therefore, a modern state and human rights, as entitlements of the individual vis-à-vis the state, are mutually conditioned. (Mollerson, 1997:89).

Human rights were developed in the West because the necessary historical conditions for their emergence appeared first in the West. They did not appear over night, but through a long, historical development. It is thus submitted that given a sufficient level of societal, i.e.

socio-economic development, human rights will manifest themselves globally, religious or cultural tradition to the contrary notwithstanding.

The Islamic world is in this respect not markedly different from other parts of the world; the resistance to the demands of globalisation will hopefully prevent the homogenisation of the world in some form of McWorld. But such resistance must find an accommodation with modernity as such, for the alternative to modernity would be, to paraphrase al-Azm, ♦to end in the wastebin of history♦.

Conclusion

Islamic societies are by no means as different from others as some of the proponents of political Islam would like to portray it. The same applies to Western commentators who for a variety of reasons posit Islam as the very antithesis of Western values and civilisation. Political and religious tolerance was by no means inherent in Western religious tradition, but occurred, fairly late if one might add, in the process of a long historical development. This process, however, is not confined to Western industrialised societies, but can be expected to extend to other peoples as well once the requisite socio-economic conditions are in place. Human rights norms must be understood in their socio-economic context, they are conditioned far more by the level of development than by any particular religious or cultural norms.

Islamic societies have so far experienced modernisation only from the receiving end of colonised and subjugated people. Not surprisingly, modern institutions have manifested themselves in a very haphazard manner, in societies that have not had sufficient time to develop the necessary intellectual, political, and legal concepts to make sense of modernity. Most nations in the Third World did not have a chance to find their own way into modernity, but had it imposed on them through superior outside forces. One may deplore this, but there appears to be no alternative in an interrelated world. Hence, the co-existence of deeply traditional mores and customs along highly modernised sectors simultaneously in so-called dual societies seems to be a fact of life. Anti-modernist revolutions, as 1978 in Iran, might succeed in reversing partial aspects of this imbalance, but cannot stop the process per se.

These imbalances, together with their collateral of angry rejection of modernity are not an idiosyncratic aspect of Islam, but can be witnessed throughout the underdeveloped world. Indeed, they were an important aspect of the West♦s very own modernisation progress. One should thus refrain from ascribing to Islam any inherent capacity to either prevent that process, to be able to offer meaningful alternatives to it. The final accommodation of Islam with modernity, and that includes secularisation appears inevitable. Human rights issues are finally only conceivable with a modicum of secularisation. Dogmatic objections should not obscure the debate, for they are of secondary importance when compared to the very real political role they play in the social enterprise.

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